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Attorneys for Defendants  
CITY OF REDDING, JOE ROSSI,  
KIP KINNEAVY, JAY GUTERDING,  
and BRETT LEONARD

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

R.H., a minor, by and through her  
guardian ad litem, Sheila Brown;  
ESTATE OF ERIC JAY HAMES, by and  
through its personal representative,  
Crystal Dunlap-Bennett,

Plaintiffs,

v.

CITY OF REDDING, a public entity; JOE  
ROSSI, an individual; KIP KINNEAVY,  
an individual; JAY GUTERDING, an  
individual; BRETT LEONARD, an  
individual; and DOES 5 through 20  
inclusive,

Defendants.

Case No. 2:20-cv-01435-WBS-DMS

**CITY OF REDDING; JOE ROSSI AND  
BRETT LEONARD ANSWER TO FIRST  
AMENDED COMPLAINT**

**DEMAND FOR JURY TRIAL**

Hon. William B. Shubb

Come now CITY OF REDDING, JOE ROSSI, KIP KINNEAVY, JAY GUTERDING,  
and BRETT LEONARD (“defendants”), and in answer to the allegations of the First Amended  
Complaint (“Complaint” or “First Amended Complaint”) respond as follows:

**I. JURISDICTION**

1. In answer to the allegations of paragraph 1 of the First Amended Complaint, these  
defendants have no information or belief to enable them to answer said allegations, and for that

1 reason and basing their denial on that ground, deny both generally and specifically, each and  
2 every, all and singular, the allegations contained therein.

3 2. Admitted.

4 3. Admitted.

5 4. In answer to the allegations of paragraph 4 of the First Amended Complaint, these  
6 defendants have no information or belief to enable them to answer said allegations, and for that  
7 reason and basing their denial on that ground, deny both generally and specifically, each and  
8 every, all and singular, the allegations contained therein.

9 5. In answer to the allegations of paragraph 5 of the First Amended Complaint, these  
10 defendants have no information or belief to enable them to answer said allegations, and for that  
11 reason and basing their denial on that ground, deny both generally and specifically, each and  
12 every, all and singular, the allegations contained therein.

13 6. Admitted.

14 7. In answer to the allegations of paragraph 7 of the First Amended Complaint, these  
15 defendants have no information or belief to enable them to answer said allegations, and for that  
16 reason and basing their denial on that ground, deny both generally and specifically, each and  
17 every, all and singular, the allegations contained therein.

18 8. In answer to the allegations of paragraph 8 of the First Amended Complaint, these  
19 defendants have no information or belief to enable them to answer said allegations, and for that  
20 reason and basing their denial on that ground, deny both generally and specifically, each and  
21 every, all and singular, the allegations contained therein.

22 9. In answer to the allegations of paragraph 9 of the First Amended Complaint, these  
23 defendants have no information or belief to enable them to answer said allegations, and for that  
24 reason and basing their denial on that ground, deny both generally and specifically, each and  
25 every, all and singular, the allegations contained therein.

26 10. Admitted.

27 **II. FACTS COMMON TO ALL CAUSES OF ACTION**

28 11. In answer to the allegations of paragraph 11 of the First Amended Complaint,

1 these defendants have no information or belief to enable them to answer said allegations, and for  
2 that reason and basing their denial on that ground, deny both generally and specifically, each and  
3 every, all and singular, the allegations contained therein.

4 12. Admitted.

5 13. Admitted.

6 14. In answer to the allegations of paragraph 14 of the First Amended Complaint,  
7 these defendants have no information or belief to enable them to answer said allegations, and for  
8 that reason and basing their denial on that ground, deny both generally and specifically, each and  
9 every, all and singular, the allegations contained therein.

10 15. Admitted.

11 16. In answer to the allegations of paragraph 16 of the First Amended Complaint,  
12 these defendants deny both generally and specifically, each and every, all and singular, the  
13 allegations contained therein.

14 17. In answer to the allegations of paragraph 17 of the First Amended Complaint,  
15 these defendants have no information or belief to enable them to answer said allegations, and for  
16 that reason and basing their denial on that ground, deny both generally and specifically, each and  
17 every, all and singular, the allegations contained therein.

18 **III. FIRST CLAIM FOR RELIEF**

19 **Fourth Amendment- Excessive Force (42 U.S.C. §1983)**

20 (Against Officer Defendants and Does 5-20)

21 18. In answer to the allegations of paragraph 18 of the First Amended Complaint,  
22 these defendants have no information or belief to enable them to answer said allegations, and for  
23 that reason and basing their denial on that ground, deny both generally and specifically, each and  
24 every, all and singular, the allegations contained therein.

25 19. In answer to the allegations of paragraph 19 of the First Amended Complaint,  
26 these defendants deny both generally and specifically, each and every, all and singular, the  
27 allegations contained therein.

28 20. In answer to the allegations of paragraph 20 of the First Amended Complaint,

1 these defendants have no information or belief to enable them to answer said allegations, and for  
2 that reason and basing their denial on that ground, deny both generally and specifically, each and  
3 every, all and singular, the allegations contained therein.

4 21. In answer to the allegations of paragraph 21 of the First Amended Complaint,  
5 these defendants deny both generally and specifically, each and every, all and singular, the  
6 allegations contained therein.

7 22. In answer to the allegations of paragraph 22 of the First Amended Complaint,  
8 these defendants deny both generally and specifically, each and every, all and singular, the  
9 allegations contained therein.

10 23. In answer to the allegations of paragraph 23 of the First Amended Complaint,  
11 these defendants have no information or belief to enable them to answer said allegations, and for  
12 that reason and basing their denial on that ground, deny both generally and specifically, each and  
13 every, all and singular, the allegations contained therein.

14 **IV. SECOND CLAIM FOR RELIEF**

15 **Fourteenth Amendment – Substantive Due process (42 U.S.C. §1983)**

16 (Against Officer Defendants and Does 5-20)

17 24. In answer to the allegations of paragraph 24 of the First Amended Complaint,  
18 these defendants have no information or belief to enable them to answer said allegations, and for  
19 that reason and basing their denial on that ground, deny both generally and specifically, each and  
20 every, all and singular, the allegations contained therein.

21 25. Admitted.

22 26. Admitted.

23 27. In answer to the allegations of paragraph 27 of the First Amended Complaint,  
24 these defendants deny both generally and specifically, each and every, all and singular, the  
25 allegations contained therein.

26 28. In answer to the allegations of paragraph 28 of the First Amended Complaint,  
27 these defendants have no information or belief to enable them to answer said allegations, and for  
28 that reason and basing their denial on that ground, deny both generally and specifically, each and

every, all and singular, the allegations contained therein.

29. In answer to the allegations of paragraph 29 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

30. In answer to the allegations of paragraph 28 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

**V. THIRD CLAIM FOR RELIEF**

**Municipal Liability (42 U.S.C. § 1983)**

(Against City)

31. In answer to the allegations of paragraph 31 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

32. Admitted.

33. In answer to the allegations of paragraph 33 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

34. In answer to the allegations of paragraph 34 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

35. In answer to the allegations of paragraph 35 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

36. In answer to the allegations of paragraph 36 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the

allegations contained therein.

37. In answer to the allegations of paragraph 37 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

38. In answer to the allegations of paragraph 38 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

## **VI. FOURTH CLAIM FOR RELIEF**

### **Battery – Wrongful Death and Survival Action (California Common Law)**

(Against All Defendants)

39. In answer to the allegations of paragraph 39 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

40. In answer to the allegations of paragraph 40 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

41. In answer to the allegations of paragraph 41 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

42. In answer to the allegations of paragraph 42 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

43. In answer to the allegations of paragraph 43 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and

every, all and singular, the allegations contained therein.

**VII. FIFTH CLAIM FOR RELIEF**

**Violation of Bane Act (Cal. Civil Code § 52.1)**

(Against All Defendants)

44. In answer to the allegations of paragraph 44 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

45. In answer to the allegations of paragraph 45 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

46. In answer to the allegations of paragraph 46 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

47. In answer to the allegations of paragraph 47 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

48. In answer to the allegations of paragraph 48 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

49. In answer to the allegations of paragraph 49 of the First Amended Complaint, these defendants have no information or belief to enable them to answer said allegations, and for that reason and basing their denial on that ground, deny both generally and specifically, each and every, all and singular, the allegations contained therein.

50. In answer to the allegations of paragraph 50 of the First Amended Complaint, these defendants deny both generally and specifically, each and every, all and singular, the allegations contained therein.

1           51. In answer to the allegations of paragraph 51 of the First Amended Complaint,  
2 these defendants have no information or belief to enable them to answer said allegations, and for  
3 that reason and basing their denial on that ground, deny both generally and specifically, each and  
4 every, all and singular, the allegations contained therein.

5                                   **VIII. SIXTH CLAIM FOR RELIEF**

6                   **Negligence – Wrongful Death and Survival Action (California Common Law)**

7                                   (Against All Defendants)

8           52. In answer to the allegations of paragraph 52 of the First Amended Complaint,  
9 these defendants have no information or belief to enable them to answer said allegations, and for  
10 that reason and basing their denial on that ground, deny both generally and specifically, each and  
11 every, all and singular, the allegations contained therein.

12           53. In answer to the allegations of paragraph 53 of the First Amended Complaint,  
13 these defendants deny both generally and specifically, each and every, all and singular, the  
14 allegations contained therein.

15           54. In answer to the allegations of paragraph 54 of the First Amended Complaint,  
16 these defendants deny both generally and specifically, each and every, all and singular, the  
17 allegations contained therein.

18                   a. In answer to the allegations of paragraph 54 (a) of the First Amended  
19 Complaint, these defendants deny both generally and specifically, each and every, all and  
20 singular, the allegations contained therein.

21                   b. In answer to the allegations of paragraph 54 (b) of the First Amended  
22 Complaint, these defendants deny both generally and specifically, each and every, all and  
23 singular, the allegations contained therein.

24                   c. In answer to the allegations of paragraph 54 (c) of the First Amended  
25 Complaint, these defendants deny both generally and specifically, each and every, all and  
26 singular, the allegations contained therein.

27           55. In answer to the allegations of paragraph 55 of the First Amended Complaint,  
28 these defendants have no information or belief to enable them to answer said allegations, and for



1 that reason and basing their denial on that ground, deny both generally and specifically, each and  
2 every, all and singular, the allegations contained therein.

3 56. In answer to the allegations of paragraph 56 of the First Amended Complaint,  
4 these defendants have no information or belief to enable them to answer said allegations, and for  
5 that reason and basing their denial on that ground, deny both generally and specifically, each and  
6 every, all and singular, the allegations contained therein.

7 57. In answer to the allegations of paragraph 57 of the First Amended Complaint,  
8 these defendants have no information or belief to enable them to answer said allegations, and for  
9 that reason and basing their denial on that ground, deny both generally and specifically, each and  
10 every, all and singular, the allegations contained therein.

11 WHEREFORE, defendants pray as hereinafter follows:

12 **AFFIRMATIVE DEFENSES**

13 **FIRST AFFIRMATIVE DEFENSE**

14 AS AND FOR A FIRST, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
15 ALLEGE:

16 That plaintiff assumed the risk of any injuries and/or damages resulting from the matters  
17 set forth in said First Amended complaint, and that said assumption of risk by plaintiff ERIC  
18 HAMES was a cause of the injuries and/or damages alleged by plaintiff ERIC HAMES, if any  
19 there were.

20 **SECOND AFFIRMATIVE DEFENSE**

21 AS AND FOR A SECOND, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
22 ALLEGE:

23 That plaintiff's decedent assumed the risk of any injuries and/or damages resulting from  
24 the matters set forth in said complaint, and that said assumption of risk by decedent was a cause  
25 of the injuries and/or damages alleged by plaintiff, if any there were.

26 ///

27 ///

28 ///

THIRD AFFIRMATIVE DEFENSE

AS AND FOR A THIRD, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

That plaintiff's decedent was himself negligent and careless in and about the matters and events set forth in the First Amended complaint, and that said negligence contributed to his alleged injuries and/or damages. The verdict of the jury in favor of plaintiff, if any, which may be rendered in this case must therefore be reduced by the percentage that the negligence of plaintiff's decedent contributed to the accident and injuries complained of, if any there were.

FOURTH AFFIRMATIVE DEFENSE

AS AND FOR A FOURTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

That the First Amended complaint does not state facts sufficient to constitute a cause of action against these answering defendants.

FIFTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

That the matters alleged in the First Amended complaint were caused by the sole negligence of ERIC HAMES.

SIXTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

Plaintiff's cause of action is barred by reason of the provisions of California Code of Civil Procedure sections 335.1, 340, and 343.

SEVENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
ALLEGE:

Plaintiff's cause of action is barred by the statute(s) of limitations as set forth in Government Code Sections 901, 945.4, 945.6, 945.8, and all other applicable statutes of

1 limitations.

2 EIGHTH AFFIRMATIVE DEFENSE

3 AS AND FOR ANEIGHTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
4 ALLEGE:

5 Decedent was guilty of willful misconduct and wanton and reckless behavior in and about  
6 the matters and events set forth in said First Amended complaint; and that said willful misconduct  
7 and wanton and reckless behavior contributed to the injuries and damages alleged, if any there  
8 were.

9 NINTH AFFIRMATIVE DEFENSE

10 AS AND FOR A NINTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
11 ALLEGE:

12 That decedent willfully, wrongfully, unlawfully, and without just cause or provocation  
13 made an assault and battery against and upon the person of defendants; defendants thereupon  
14 necessarily defended themselves and such acts of force complained of were committed in the  
15 necessary protection of defendants' body and person.

16 Prior to the time when defendants were alleged to have committed the acts complained of,  
17 decedent willfully, wrongfully, and unlawfully made an assault upon defendants and would have  
18 beaten, bruised, and ill-treated him if defendants have not immediately defended themselves against  
19 said assault; and in so doing, defendants necessarily and unavoidably came in contact with  
20 decedent and threatened decedent, but no more than was necessary for said defense.

21 Any damages or injuries suffered by plaintiff was occasioned by decedent's own wrongful  
22 acts; and the acts of defendants mentioned above are the same acts of which plaintiff complained.

23 TENTH AFFIRMATIVE DEFENSE

24 AS AND FOR A TENTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
25 ALLEGE:

26 At the time and place mentioned in the First Amended complaint, decedent willfully,  
27 wrongfully, and unlawfully, and without just cause or provocation made an assault and battery  
28 against and upon the person of defendants and other persons present. Decedent would have

1 beaten, bruised, and seriously injured said person if defendants had not defended themselves and  
2 others against the acts of decedent. If, in defending themselves and others, defendants unavoidably  
3 touched and threatened decedent, defendants used only the force reasonably necessary to prevent  
4 decedent from further injuring them and other persons present.

5 Any damages or injuries suffered by plaintiff were occasioned by decedent's own wrongful  
6 acts; and the acts of defendants mentioned above are the same acts of which plaintiff complained.

7 ELEVENTH AFFIRMATIVE DEFENSE

8 AS AND FOR AN ELEVENTH, SEPARATE AND DISTINCT DEFENSE,  
9 DEFENDANTS ALLEGE:

10 The decedent willfully and wrongfully provoked the altercation in which he was involved  
11 and said provocation by decedent was a cause of the injuries and damages allegedly sustained by  
12 plaintiff.

13 TWELFTH AFFIRMATIVE DEFENSE

14 AS AND FOR A TWELFTH, SEPARATE AND DISTINCT DEFENSE, DEFENDANTS  
15 ALLEGE:

16 Should plaintiff recover non-economic damages against any defendants, the liability for  
17 non-economic damages is limited to the degree of fault and several liability of said defendants  
18 pursuant to Civil Code section 1431.2 and a separate, several judgment shall be rendered against  
19 said defendants based upon said defendants' degree of fault and several liability.

20 THIRTEENTH AFFIRMATIVE DEFENSE

21 AS AND FOR A THIRTEENTH, SEPARATE AND DISTINCT DEFENSE,  
22 DEFENDANTS ALLEGE:

23 As a further, separate, affirmative defense, defendants allege that they are entitled to a set-  
24 off of any damages recovered by plaintiff.

25 FOURTEENTH AFFIRMATIVE DEFENSE

26 AS AND FOR A FOURTEENTH, SEPARATE AND DISTINCT DEFENSE,  
27 DEFENDANTS ALLEGE:

28 These answering defendants, a public entity, is immune from liability pursuant to

California Government Code sections 800 et seq.

FIFTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A FIFTEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

At all times mentioned in the First Amended complaint, defendants were public employee of CITY OF REDDING and if they performed any of the acts or omissions alleged as the basis of the First Amended complaint, the acts or omissions were the result of the exercise of the discretion vested in them. Defendants are therefore immune from liability.

SIXTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SIXTEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

At all times mentioned in the First Amended complaint, defendants were public employee of CITY OF REDDING and, as such, are not liable for any of these acts or omissions alleged in the First Amended complaint because the First Amended complaint only alleges that defendants are liable based on the acts or omissions of others.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A SEVENTEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

Defendants allege that plaintiff failed to set forth the facts sufficient to state a cause of action due to a failure to comply with claims requirements of the California Government Code §§ 900 et. seq.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS AND FOR A EIGHTEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

Defendants alleged employee mentioned in plaintiff's First Amended complaint was, at all times, duly qualified, appointed and acting police officers of City of Redding and peace officers of the State of California and in accordance with the Constitution of the United States and the State of California and the laws of the United States and the laws of the State of California; and at

all times mentioned herein, said officers were engaged in the performance of their regularly assigned duties within the scope of their duties as peace officers of the City of Redding.

NINETEENTH AFFIRMATIVE DEFENSE

AS AND FOR A NINETEENTH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

These answering defendants acted in good faith and with a reasonable belief that the actions were lawful and further did not directly or indirectly perform any acts whatsoever which would constitute a breach of any duty owed to plaintiff.

TWENTIETH AFFIRMATIVE DEFENSE

AS AND FOR A TWENTIETH, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

The acts of these answering defendants were lawful and proper and in all respects were reasonable and legal.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-FIRST, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

In this connection probable cause existed to believe that plaintiff had committed a public offense and, therefore, probable cause existed to detain and/or arrest plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-SECOND, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

At all times relevant to this litigation, plaintiff was subject to restraint as was reasonably necessary for his detention and/or arrest.

TWENTY-THIRD AFFIRMATIVE DEFENSE

AS AND FOR A TWENTY-THIRD, SEPARATE AND DISTINCT DEFENSE,  
DEFENDANTS ALLEGE:

At all times relevant to this litigation, reasonable cause existed to believe that plaintiff had committed a public offense and, therefore, reasonable force was used to effect plaintiff's arrest, to

1 prevent escape or to overcome resistance.

2 TWENTY-FOURTH AFFIRMATIVE DEFENSE

3 AS AND FOR A TWENTY-FOURTH, SEPARATE AND DISTINCT DEFENSE,  
4 DEFENDANTS ALLEGE:

5 These answering defendants are immune from liability pursuant to the provisions of §§  
6 815, 815.2, 818, 820.2, 820.4, 820.6, 820.8, 820.9, 821.6, 844.6, and 845.6 of the Government  
7 Code of the State of California.

8 TWENTY-FIFTH AFFIRMATIVE DEFENSE

9 AS AND FOR A TWENTY-FIFTH, SEPARATE AND DISTINCT DEFENSE,  
10 DEFENDANTS ALLEGE:

11 Defendants are immune from 42 U.S.C. §1983 liability pursuant to the doctrine of  
12 qualified immunity. See *White v. Pauly*, 137 S. Ct. 548 (2017), *Ashcroft v. al-Kidd*, 563 U.S. 731  
13 (2011) and *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

14 TWENTY-SIXTH AFFIRMATIVE DEFENSE

15 AS AND FOR A TWENTY-SIXTH, SEPARATE AND DISTINCT DEFENSE,  
16 DEFENDANTS ALLEGE:

17 The facts alleged in the First Amended complaint do not involve any custom, practice,  
18 procedure or regulation of defendants, which gives rise to a violation of a constitutional right  
19 pursuant to *Monell v. New York City Department of Social Services*, 436 U.S. 658 (1978).

20 TWENTY-SEVENTH AFFIRMATIVE DEFENSE

21 AS AND FOR A TWENTY-SEVENTH, SEPARATE AND DISTINCT DEFENSE,  
22 DEFENDANTS ALLEGE:

23 Plaintiff has wholly failed to plead facts which give rise to any colorable claim for  
24 punitive or exemplary damages against defendants, nor do any such facts exist.

25 TWENTY-EIGHTH AFFIRMATIVE DEFENSE

26 AS AND FOR A TWENTY-EIGHTH, SEPARATE AND DISTINCT DEFENSE,  
27 DEFENDANTS ALLEGE:

28 Plaintiff's claims for punitive or exemplary damages violate defendants' right to

1 procedural due process, substantive due process, and protection from "excessive" fines as  
2 guaranteed by the Fifth, Fourteenth, and Eighth Amendments to the United States Constitution,  
3 respectively, and the Constitution of the State of California.

4 WHEREFORE, defendants pray that plaintiff takes nothing by way of the First Amended  
5 complaint on file herein and that defendants have judgment for their costs, attorneys' fees and for  
6 such other and further relief as the court deems proper.

8 Respectfully submitted,

9 Dated: September 14, 2020

ALLEN, GLAESSNER,  
HAZELWOOD & WERTH, LLP

11 By: /s/ Dale L. Allen  
12 DALE L. ALLEN  
13 KEVIN P. ALLEN  
14 Attorneys for Defendants  
CITY OF REDDING, JOE ROSSI,  
and BRETT LEONARD